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SUPREME COURT, U. S.

No. 1067

In the Supreme Court of the United States

OCTOBER TERM, 1967

JOHN HOUSE, PETITIONER

v.

J. J. O'LEARY, DEPUTY COMMISSIONER, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR RESPONDENT DEPUTY COMMISSIONER IN OPPOSITION

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ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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Petitioner in this case recognizes (Pet. 7, 22) that he is raising the identical issue presented by the petitions in *Nicholson* v. *Calbeck*, No. 877, this Term, and *McCollough* v. *The Travelers Insurance Co.*, No. 788, this Term. On January 15, 1968, after the filing of the instant petition, the Court denied certiorari in *Nicholson* and *McCollough*. There are, we submit, no reasons to treat this petition differently.

1. Petitioner is a longshoreman whose claim under the Longshoremen's and Harbor Workers' Compensa-

tion Act, 33 U.S.C. 901 *et seq.*, was rejected by the Deputy Commissioner on the ground that a pierside injury is not covered by the Act (Pet. App. 25). Both the district court and the court of appeals affirmed the denial of the claim on this ground.

Petitioner was working on top of a loaded gondola-type railroad car located on tracks running the length of a pier. In the course of loading the contents onto a ship he fell onto the pier and was injured. The pier was erected on pilings resting on the bed of navigable waters of the United States (Pet. App. 26). The courts below held that the injury did not occur "upon the navigable waters of the United States" within the meaning of the Act, 33 U.S.C. 903(a), because piers have traditionally been viewed as extensions of land.

2. For the reasons set forth more fully in our Memorandum In Opposition in *Nicholson* v. *Calbeck*, *supra*, the decision below is correct and does not warrant review. The Longshoremen's Act was passed to insure coverage for injuries that were beyond the realm of state workmen's compensation acts. It was settled, however, before the passage of the Act that injuries occurring on docks, wharves, and piers were compensable under state workmen's compensation laws and did not give rise to maritime claims. See *State Industrial Commission* v. *Nordenholt Corp.*, 259 U.S. 263; *T. Smith & Son, Inc.* v. *Taylor*, 276 U.S. 179, 181, 182. Thus, the relevant Senate Report accompanying the Federal Longshoremen's Act stated:

> [I]njuries occurring in loading or unloading are not covered unless they occur on the ship or be-

> tween the wharf and the ship so as to bring them within the maritime jurisdiction of the United States.

S. Rep. No. 973, 69th Cong., 1st Sess., p. 16.

This Court subsequently indicated in *Swanson* v. *Marra Bros., Inc.*, 328 U.S. 1, that injuries on docks, wharves, and piers were not covered by the Act:

> * * * [S]ince * * * [the Longshoremen's] Act is restricted to compensation for injuries occurring on navigable waters, *it excludes from its own terms * * * any remedies against the employer for injuries inflicted on shore.*

Id. at 7. (Emphasis added.)

3. The recent case of *Calbeck* v. *Travelers Ins. Co.*, 370 U.S. 114, relied on by petitioner (Pet. 15-19), is consistent with this result. The general purposes of the Act as seen by the Court were: (1) to insure that all maritime injuries are covered by some compensation act; and (2) to eliminate uncertainty in the choice of remedy. 370 U.S. at 119-122. Neither of these objectives is contravened by the holding of the respondent deputy commissioner and lower courts here, since that holding, in accord with forty years of administrative practice, see 1927 A.M.C. 1558, 1855 (Opinion Nos. 5, 16), merely reaffirms the long-standing rule in an area always covered by state workmen's compensation acts. The issue in *Calbeck* was explicitly confined to the question of coverage *vel non* of an injury that took place on an uncompleted vessel concededly afloat on the navigable waters. The holding that Congress intended the federal act to apply in that situation does not suggest that the Court

was abandoning the settled standards for determining the logically anterior and statutorily distinct jurisdictional question whether the incident occurred "upon the navigable waters" at all.

4. Petitioner concedes that the lower courts have uniformly rejected the position he urges (Pet. 19). See *Nicholson* v. *Calbeck*, 385 F. 2d 221 (C.A. 5), certiorari denied, No. 877, this Term (January 15, 1968); *Michigan Mut. Liability Co.* v. *Arrien*, 344 F. 2d 640, 644 (C.A. 2) (dictum), certiorari denied, 382 U.S. 835; *American Export Lines, Inc.* v. *Revel*, 266 F. 2d 82, 84 (C.A. 4) (dictum); cf. *Travelers Ins. Co.* v. *Shea*, 382 F. 2d 344 (C.A. 5), certiorari denied *sub nom. McCollough* v. *The Travelers Insurance Co.*, No. 788, this Term (January 15, 1968); accord, *Johnston* v. *Marshall*, 128 F. 2d 13 (C.A. 9), certiorari denied, 317 U.S. 629. Any change in this settled state of the law should be sought from Congress.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

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